



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,812	12/29/2003	Gerald A. Hutchinson	APTPEPI.043A	1883
20995 7590 04/13/2009 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER WEEKS, GLORIA R				
ART UNIT 3721		PAPER NUMBER		
NOTIFICATION DATE 04/13/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
eOAPilot@kmob.com

### Office Action Summary

**Application No.**

10/747,812

**Applicant(s)**

HUTCHINSON ET AL.

**Examiner**

GLORIA R. WEEKS

**Art Unit**

3721

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 6-10, 14, 15, 17-24 and 26-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-10, 14, 15, 17-24 and 26-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is in response to the amendment and remarks received on January 12, 2009.

#### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 12, 2009 has been entered.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 6-13, 18-22, 26-31, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katou et al. (USPN 6,214,282) in view of Weiler (USPN 4,671,763, Pasternicki (USPN 4, 675,070) and Peronek et al. (USPN 6, 698,160).

In reference to claims 1 and 7-13, 19-22, 26, 28-31, 35 and 36, Katou et al. discloses a process and apparatus for manufacturing a pouch<sup>1</sup> comprising: grasping a neck portion of a perform with a positive transfer/handling system (figures 13B-13f) and maintaining control of the neck portion of a preform with the positive transfer system during blow molding (figures

---

<sup>1</sup> sealed plastic or foil container (American Heritage Dictionary)

13B-13c) the perform into a pouch, wherein the neck portion of the preform is the same as the neck portion of the pouch; filling the pouch with a product (figure 13d); closing the filled pouch (figure 13e); and releasing the filled and sealed pouch from the system for use by a consumer.

Katou et al. does not disclose the wall thickness of the pouch. Weiler teaches a process of blow molding a preform into a pouch, wherein the preform is made from a layer of polypropylene having a thickness of .010 inches. (column 10 lines 45-50). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the method of Katou et al. to include a polypropylene perform having a wall thickness of .010 inches, since column 10 lines 51-57 provides a uniform compression of the perform during shaping of the perform.

Katou et al. does not disclose placing the filled pouch into a rigid container while maintaining control of the neck portion with the positive transfer system. Pasternicki teaches a method of placing a pouch in a rigid container 47 while maintaining control of a neck portion 10 of the pouch 11 with a positive transfer system 6. It would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the process of Katou et al. to include the step of placing the pouch into a rigid container while maintaining control of the neck portion of the pouch, since 1 lines 20-24 of Pasternicki states that such a modification provides eternal stabilization of the pouch for the purpose of allowing the pouch to stand upright on a surface without further assistance.

Neither Katou et al. nor Pasternicki discloses capping the filled pouch. Peronek et al. teaches a method of capping a filled pouch while maintaining control of the neck portion of the pouch. It would have been obvious to one having ordinary skill in the art at the time of the

---

invention to further modify the method of Katou et al. to include the step of capping the filled pouch under positive neck control, since caps are known removable closures that allow accessibility to a pouch contents while allowing resealing of the pouch for protection of the contents. Column 1 lines 55-57 of Peronek et al. states that positive neck control of the pouch during capping provides essential support to the container during processing.

Regarding claims 6, 18 and 27, while Katou et al. in view of Pasternicki discloses placing the pouch into a rigid container; the rigid container in which the pouch is placed has a tubular shape with a flat base, rather than a box shape. Examiner finds that both the tubular container and the box container would provide equal support to the pouch for Applicants disclosed advantage (paragraph 36 or specification) of providing external support to the pouch.

5. Claims 2, 3, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katou et al. (USPN 6,214,282) in view of Weiler (USPN 4,671,763, Pasternicki (USPN 4, 675,070) and Peronek et al. (USPN 6, 698,160) as applied to claim 1 above, and further in view of Wakabayashi (USPN 3,818,785).

Regarding claims 2, 3, 23 and 24, the modified process of Katou et al. does not disclose decorating and/or dressing the flexible containers. Wakabayashi teaches a process of manufacturing flexible containers including the steps of: blow molding (A) a preform into a flexible container; filling (I; column 2 lines 61-62) the flexible container with a desired product; and decorating (K) the flexible container after the container has been filled. It would have been obvious to one having ordinary skill in the art to further modify the process of Katou et al. to include the step of decorating flexible containers, as suggested by Wakabayashi, for the purpose of disclosing information regarding the contents of the flexible container.

6. Claims 10, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCullough et al. (USPN 5,049,349) in view of Katou et al. (USPN 6,214,282) in view of Weiler (USPN 4,671,763 and McCullough et al. (USPN 5,049,349).

Katou et al. discloses an apparatus for manufacturing a pouch<sup>2</sup> comprising: grasping a neck portion of a perform with a positive handling system 63 (figures 13B-13f) and maintaining control of the neck portion with the positive transfer system during blow molding (figures 13B-13c) of the perform into a pouch in a manufacturing system; a filling system 36 for filling the pouch with a product (figure 13d), a closing machine 25 for closing the filled pouch (figure 13e) and releasing the filled and sealed pouch from the system for use by a consumer.

Katou et al. does not disclose the wall thickness of the pouch. Weiler teaches a system of blow molding a preform into a pouch, wherein the preform is made from a layer of polypropylene having a thickness of .010 inches. (column 10 lines 45-50). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the method of Katou et al. to include a polypropylene perform having a wall thickness of .010 inches, since column 10 lines 51-57 provides a uniform compression of the perform during shaping of the perform.

Katou et al. does not disclose a system that places the filled pouch into a rigid container before the pouch is filled. McCullough et al. teaches an apparatus for manufacturing flexible pouches, including a packaging system adapted to place the flexible pouch into a rigid box before filling the pouch. It would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the apparatus of Katou et al. to include the step of placing

---

<sup>2</sup> sealed plastic or foil container (American Heritage Dictionary)

the pouch into a rigid box while maintaining control of the neck portion of the pouch, since 2 lines 36-42 of McCullough et al. suggests that such a modification provides an inexpensive and reliable means of securing the pouch to a rigid container.

Regarding claims 6, 18 and 27, while Katou et al. in view of Pasternicki discloses placing the pouch into a rigid container; the rigid container in which the pouch is placed has a tubular shape with a flat base, rather than a box shape. Examiner finds that both the tubular container and the box container would provide equal support to the pouch for Applicants disclosed advantage (paragraph 36 or specification) of providing external support to the pouch.

7. Claims 31-33 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoneyama et al. (US 2003/0059130) in view of Katou et al. (USPN 6,214,282) and Weiler (USPN 4,671,763).

In reference to claims 31-33 and 35, Yoneyama et al. discloses a process comprising: blow molding (paragraph 4) a multi-layered perform (paragraph 24) into a flexible pouch 2; filling the flexible pouch and placing the pouch in a rigid container (paragraph 23), such that the flexible pouch relies on collapsibility for drainage. Yoneyama et al. does not disclose maintaining positive control of the preform from which the pouch is formed throughout the disclosed process. Katou et al. teaches a process and apparatus for manufacturing a pouch<sup>3</sup> comprising: grasping a neck portion of a perform with a positive transfer/handling system (figures 13B-13f) and maintaining control of the neck portion with the positive transfer system during blow molding (figures 13B-13c) the perform into a pouch, filling the pouch with a product (figure 13d), closing the filled pouch (figure 13e) and releasing the filled and sealed

---

<sup>3</sup> sealed plastic or foil container (American Heritage Dictionary)

pouch from the system for use by a consumer. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the process of Yoneyama et al. such that positive control of the neck portion of the preform is maintained since the neck portion is the portion of the preform whose size does not change or adjust during the process of molding, filling and sealing of the preform.

Yoneyama et al. also does not disclose the wall thickness of the pouch. Weiler teaches a process of blow molding a preform into a pouch, wherein the preform is made from a layer of polypropylene having a thickness of .010 inches. (column 10 lines 45-50). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the method of Katou et al. to include a polypropylene preform having a wall thickness of .010 inches, since column 10 lines 51-57 provides a uniform compression of the preform during shaping of the preform.

8. Claims 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoneyama et al. (US 2003/0059130) in view of Katou et al. (USPN 6,214,282) and Weiler (USPN 4,671,763) as applied to claim 31 above, and further in view of Yorn et al. (USPN 6,827,237).

Regarding claim 34, Yoneyama et al. discloses a method of producing a flexible pouch, including placing the flexible pouch within a rigid container. Yoneyama et al. does not disclose providing the flexible pouch with an outer layer of foam. It would have been obvious to one having ordinary skill in the art at the time of the invention to provide the flexible pouch with an outer layer of foam, since column 3 lines 59-67 states an outer layer of foam can assist the removal of contents from within the flexible pouch while positioned within the rigid container.

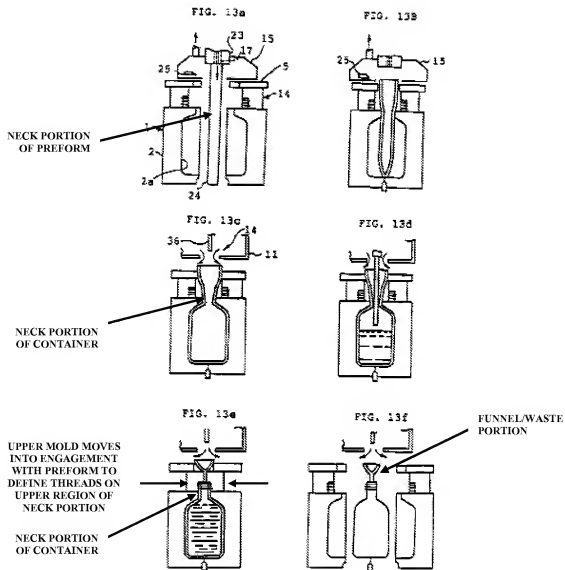


***Response to Arguments***

9. Applicant's arguments filed January 12, 2009 have been fully considered but they are not persuasive.

10. Regarding the rejection of Applicant's invention over Katou and secondary references, Applicant has argued that Katou fails to describe a method or apparatus that handle the neck portion of a preform through the process of manufacturing and filling. Applicant has referenced the funnel-shaped portion above the threaded portion of the parison illustrated in figure 13e of Katou as the neck portion of the preform. However, as previously illustrated in the Response to Arguments mailed on July 11, 2008, Examiner has referenced the narrow portion below the threaded portion of the parison as the neck portion of the preform.

As shown below, Katou discloses placing a preform between respective halves of an upper (14) and lower (2) mold (figure 13a). The lower (2) mold is then closed such that a neck portion of the preform is supported and secured by the mold halves (figure 13b). Figure 13c-13e illustrate formation of the preform in to a container and filling of the container, throughout which the neck portion is maintained in a supported and secured state by the lower mold. The figures provided below further disclose the neck portion of the preform to be the same as the neck portion of the filled container.



Thus, Examiner maintains the rejection of Applicant's invention in view of Katou et al. (USPN 6,214,282) in view of Weiler (USPN 4,671,763, Pasternicki (USPN 4, 675,070) and Peronek et al. (USPN 6, 698,160).

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to GLORIA R. WEEKS whose telephone number is (571)272-4473. The Examiner can normally be reached on M-F 7am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199

*/Gloria R. Weeks/*  
Examiner, Art Unit 3721

*/Rinaldi I Rada/*  
Supervisory Patent Examiner, Art Unit  
3721

April 9, 2009